

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GREGORY FLETCHER,
CDCR #C-41111,

Plaintiff,

vs.

PRAMO, Warden;
A.W. HERNANDEZ,

Defendants.

Case No.: 3:16-cv-01877-AJB-BGS

ORDER:

**1) GRANTING MOTION TO
PROCEED IN FORMA PAUPERIS
[ECF No. 3]**

AND

**2) DISMISSING COMPLAINT FOR
FAILING TO STATE A CLAIM
PURSUANT TO
28 U.S.C. § 1915(e)(2)(B)(ii)
AND § 1915A(b)(1)**

GREGORY FLETCHER (“Plaintiff”), currently incarcerated at Salinas Valley State Prison (“SVSP”) in Soledad, California, and proceeding pro se, has filed a civil rights Complaint pursuant to 42 U.S.C. § 1983 (ECF No. 1).

Plaintiff’s claims the Warden and Associate Warden of Richard J. Donovan Correctional Facility (“RJD”) in San Diego covered up “assaults, murders, corruptions, rape, and shooting[s]” at RJD during “all of 2011” and until October 7, 2015, as part of the “Green Wall Mafia Union” and as the result of a racial conspiracy against black

1 inmates. (ECF No. 1 at 1-4.) Plaintiff seeks injunctive relief in the form of “protection”
 2 against harm at SVSP, as well as \$25 million in general and punitive damages for “all the
 3 deaths, murders, assaults, [and] rape[s] that [Defendants] got away with.” (*Id.* at 7).

4 Plaintiff did not prepay the civil filing fee required by 28 U.S.C. § 1914(a) when
 5 he filed his Complaint; instead, he has filed a Motion to Proceed In Forma Pauperis
 6 (“IFP”) pursuant to 28 U.S.C. § 1915(a) (ECF No. 3), followed by several supplemental
 7 declarations in support of his IFP (ECF Nos. 5, 7).

8 **I. Plaintiff’s IFP Motion**

9 All parties instituting any civil action, suit or proceeding in a district court of the
 10 United States, except an application for writ of habeas corpus, must pay a filing fee of
 11 \$400.¹ *See* 28 U.S.C. § 1914(a). The action may proceed despite a plaintiff’s failure to
 12 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.
 13 § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v.*
 14 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, a prisoner who is granted leave to
 15 proceed IFP remains obligated to pay the entire fee in “increments” or “installments,”
 16 *Bruce v. Samuels*, ___ S. Ct. ___, 136 S. Ct. 627, 629 (2016); *Williams v. Paramo*, 775
 17 F.3d 1182, 1185 (9th Cir. 2015), and regardless of whether his action is ultimately
 18 dismissed. *See* 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th
 19 Cir. 2002).

20 Section 1915(a)(2) requires prisoners seeking leave to proceed IFP to submit a
 21 “certified copy of the trust fund account statement (or institutional equivalent) for . . . the
 22 6-month period immediately preceding the filing of the complaint.” 28 U.S.C.
 23 § 1915(a)(2); *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified
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25
 26 ¹ In addition to the \$350 statutory fee, civil litigants must pay an additional administrative
 27 fee of \$50. *See* 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court
 28 Misc. Fee Schedule, § 14 (eff. June 1, 2016)). The additional \$50 administrative fee does
 not apply to persons granted leave to proceed IFP. *Id.*

1 trust account statement, the Court assesses an initial payment of 20% of (a) the average
2 monthly deposits in the account for the past six months, or (b) the average monthly
3 balance in the account for the past six months, whichever is greater, unless the prisoner
4 has no assets. *See* 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having
5 custody of the prisoner then collects subsequent payments, assessed at 20% of the
6 preceding month's income, in any month in which his account exceeds \$10, and forwards
7 those payments to the Court until the entire filing fee is paid. *See* 28 U.S.C. § 1915(b)(2);
8 *Bruce*, 136 S. Ct. at 629.

9 In support of his IFP Motion, Plaintiff has submitted certified copies of his CDCR
10 Inmate Statement Report, as well as several prison certificates, verified by a SVSP trust
11 account officer, pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2. *See* ECF
12 Nos. 2, 3, 5, 7; *Andrews*, 398 F.3d at 1119. These documents show that Plaintiff had no
13 deposits to his account, carried no balance over the 6-month period preceding the filing
14 of his Complaint, and had an available balance of zero at the time of filing. As a result,
15 the Court declines to assess any initial partial filing at this time. *See* 28 U.S.C.
16 § 1915(b)(4) (providing that “[i]n no event shall a prisoner be prohibited from bringing a
17 civil action or appealing a civil action or criminal judgment for the reason that the
18 prisoner has no assets and no means by which to pay the initial partial filing fee.”);
19 *Bruce*, 136 S. Ct. at 630; *Taylor*, 281 F.3d at 850 (finding that 28 U.S.C. § 1915(b)(4)
20 acts as a “safety-valve” preventing dismissal of a prisoner’s IFP case based solely on a
21 “failure to pay . . . due to the lack of funds available to him when payment is ordered.”).

22 Therefore, the Court GRANTS Plaintiff’s Motion to Proceed IFP (Doc. No. 3) and
23 directs the Secretary of the California Department of Corrections and Rehabilitation
24 (“CDCR”), or his designee, to collect the entire \$350 balance of the filing fees required
25 by 28 U.S.C. § 1914 and forward them to the Clerk of the Court pursuant to the
26 installment payment provisions set forth in 28 U.S.C. § 1915(b)(1). *See id.*

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II. Screening Pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)

A. Standard of Review

Because Plaintiff is a prisoner and is proceeding IFP, his Complaint requires a pre-answer screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b). Under these statutes, the Court must sua sponte dismiss a prisoner's IFP complaint, or any portion of it, which is frivolous, malicious, fails to state a claim, or seeks damages from defendants who are immune. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (discussing 28 U.S.C. § 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing 28 U.S.C. § 1915A(b)). "The purpose of [screening] is 'to ensure that the targets of frivolous or malicious suits need not bear the expense of responding.'" *Nordstrom v. Ryan*, 762 F.3d 903, 920 n.1 (9th Cir. 2014) (quoting *Wheeler v. Wexford Health Sources, Inc.*, 689 F.3d 680, 681 (7th Cir. 2012)).

"The standard for determining whether a plaintiff has failed to state a claim upon which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil Procedure 12(b)(6) standard for failure to state a claim." *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012); *see also Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir. 2012) (noting that screening pursuant to § 1915A "incorporates the familiar standard applied in the context of failure to state a claim under Federal Rule of Civil Procedure 12(b)(6)"). Rule 12(b)(6) requires a complaint to "contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted); *Wilhelm*, 680 F.3d at 1121.

Detailed factual allegations are not required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678. "Determining whether a complaint states a plausible claim for relief [is] ... a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* The "mere possibility of misconduct" or "unadorned, the defendant-unlawfully-harmed me accusation[s]" fall short of meeting this plausibility standard. *Id.*; *see also Moss v. U.S. Secret Service*, 572 F.3d 962, 969

1 (9th Cir. 2009).

2 B. Plaintiff's Complaint

3 Plaintiff claims RJD's Warden and Associate Warden have, over the course of four
4 years, "intentionally and knowingly" "covered up shootings, murders, assaults, rape and
5 more" and have been "letting blacks get hurt." (ECF No. 1 at 3-4.) Plaintiff claims this is
6 due to a racist conspiracy "by CDC officers Green Wall Mafia Union" and because there
7 are no cameras on the A, B, C, or D Facility at RJD; therefore "they['ve] never been
8 caught." (*Id.* at 4.)

9 First, the Court finds Plaintiff's Complaint fails to state a claim for conspiracy
10 under section 1983, because it offers only "naked assertions devoid of further factual
11 enhancement," *Iqbal*, 556 U.S. at 678, to show the existence of an agreement or a
12 meeting of the minds to violate his constitutional rights, or any actual deprivation of
13 those constitutional rights. *Avalos v. Baca*, 596 F.3d 583, 592 (9th Cir. 2010); *Franklin v.*
14 *Fox*, 312 F.3d 423, 441 (9th Cir. 2001); *see also Jones v. Jimenez*, No. 1:14-cv02045 LJO
15 SAB PC, 2015 WL 8538922, at *7 (E.D. Cal. Dec. 11, 2015) (finding prisoner's vague
16 references to "green wall" conspiracy tactics insufficient to state a cognizable conspiracy
17 claim, and therefore, subject to sua sponte dismissal pursuant to 28 U.S.C. § 1915(e)(2)
18 and § 1915A).

19 Second, it appears Plaintiff seeks to hold both RJD's Warden and Associate
20 Warden liable for unspecified constitutional violations based solely on their supervisory
21 duties with regard to other unnamed RJD officials. But his Complaint contains no further
22 "factual content" describing either Defendant's direct involvement in any constitutional
23 injury actually suffered by Plaintiff sufficient to "allow[] the court to draw the reasonable
24 inference that the [Wardens] [are] liable" for any constitutional violation. *Iqbal*, 556 U.S.
25 at 678. "All § 1983 claims must be premised on a constitutional violation." *Nurre v.*
26 *Whitehead*, 580 F.3d 1087, 1092 (9th Cir. 2009). To state a claim, Plaintiff must
27 demonstrate that each defendant personally participated in the deprivation of his
28 constitutional rights. *Iqbal*, 556 U.S. at 673; *Colwell v. Bannister*, 763 F.3d 1060, 1070

(9th Cir. 2014). Liability may not be imposed on supervisory personnel for the acts or omissions of their subordinates under the theory of respondeat superior. *Iqbal*, 556 U.S. at 672-673. “In order for a person acting under color of state law to be liable under section 1983 there must be a showing of personal participation in the alleged rights deprivation.” *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

“A defendant may be held liable as a supervisor under § 1983 ‘if there exists either (1) his or her personal involvement in the constitutional deprivation, or (2) a sufficient causal connection between the supervisor’s wrongful conduct and the constitutional violation.’” *Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011) (quoting *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989)). This causal connection “can be established by setting in motion a series of acts by others, or by knowingly refusing to terminate a series of acts by others, which the supervisor knew or reasonably should have known would cause others to inflict a constitutional injury.” *Id.* at 1207-08 (internal quotation marks, citation, and alterations omitted).

In his Complaint, Plaintiff claims only that both Defendants “kn[e]w[] exactly what [wa]s going on,” and that Associate Warden Hernandez is “very racist and prejudice.” (ECF No. 2, 4.) But these conclusory accusations fail to plausibly suggest that either Defendant personally participated in, or directed their subordinates to do anything which caused an actual violation of Plaintiff’s constitutional rights. *Jones*, 297 F.3d at 934; *Starr*, 625 F.3d at 1205-06; *Redman v. City of San Diego*, 942 F.2d 1435, 1447 (9th Cir. 1991) (finding supervisory personnel liable only when an adequate causal connection is alleged between the Defendant’s breach of duty and the plaintiff’s constitutional injury). In fact, Plaintiff fails to allege *he* was ever actually injured by the racial conspiracy he seeks to expose. *See Warth v. Seldin*, 422 U.S. 490, 499 (1975) (prisoners lack standing to assert the constitutional rights of other prisoners and may only challenge violations of their own rights that result in an actual injury).

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1 “Absent vicarious liability, each Government official, his or her title
 2 notwithstanding, is only liable for his or her own misconduct.” *Iqbal*, 556 U.S. at 677.
 3 Thus, as currently pleaded, the Court finds Plaintiff’s Complaint amounts to no more than
 4 “an unadorned, the defendant[s]-unlawfully-harmed-me-accusation,” that “stops short of
 5 the line between possibility and plausibility” that he is entitled to relief. *Id.* at 678.
 6 Therefore, it “fails to state a claim to relief that is plausible on its face,” *Id.*; *Taylor*, 880
 7 F.2d at 1045, and his claims against the Warden and Associate Warden must be
 8 dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and § 1915A(b)(1). *See Lopez*, 203
 9 F.3d at 1126-27; *Rhodes*, 621 F.3d at 1004.

10 C. Leave to Amend

11 A pro se litigant must be given leave to amend his or her complaint to state a claim
 12 unless it is absolutely clear the deficiencies of the complaint cannot be cured by
 13 amendment. *See Lopez*, 203 F.3d at 1130 (noting leave to amend should be granted when
 14 a complaint is dismissed under 28 U.S.C. § 1915(e) “if it appears at all possible that the
 15 plaintiff can correct the defect”). Therefore, while the Court finds Plaintiff’s Complaint
 16 fails to state any claim upon which relief can be granted, and doubts he will be able to
 17 cure his pleading defects, it will provide him a chance to do so—if he can. *See Akhtar v.*
 18 *Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012) (citing *Ferdik v. Bonzelet*, 963 F.2d 1258,
 19 1261 (9th Cir. 1992)).²

21 ² The Court takes judicial notice of two other civil rights actions recently filed by Plaintiff
 22 in the Southern District of California. Both also allege constitutional violations occurring
 23 at RJD, but both involve separate claims against different sets of Defendants. *See e.g.*,
 24 *Fletcher v. Marquez, et al.*, 3:16-cv-00564-JLS-MDD (S.D. Cal. filed March 4, 2016);
 25 *Fletcher v. Quin, et al.*, 3:15-cv-02156-GPC-NLS (S.D. Cal. Filed Sept. 24, 2015); *Bias v.*
 26 *Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (court “may take notice of proceedings in
 27 other courts, both within and without the federal judicial system, if those proceedings have
 28 a direct relation to matters at issue.”) (quoting *Bennett v. Medtronic, Inc.*, 285 F.3d 801,
 803 n.2 (9th Cir. 2002)). Plaintiff is cautioned that should he elect to amend his Complaint
 in this case, he may *not* include any claim which is duplicative of one he has already alleged
 in another case pending before another judge. *See Cato v. United States*, 70 F.3d 1103,

1 **III. Conclusion and Orders**

2 Good cause appearing, the Court:

3 1. **GRANTS** Plaintiff's Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a)
4 (Doc. No. 3).

5 2. **DIRECTS** the Secretary of the CDCR, or his designee, to collect from
6 Plaintiff's prison trust account the \$350 filing fee owed in this case by garnishing
7 monthly payments from his account in an amount equal to twenty percent (20%) of the
8 preceding month's income and forwarding those payments to the Clerk of the Court each
9 time the amount in his account exceeds \$10 pursuant to 28 U.S.C. § 1915(b)(2). ALL
10 PAYMENTS SHALL BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER
11 ASSIGNED TO THIS ACTION.

12 3. **DIRECTS** the Clerk of the Court to serve a copy of this Order on Scott
13 Kernan, Secretary, CDCR, P.O. Box 942883, Sacramento, California, 94283-0001.

14 4. **DISMISSES** Plaintiff's Complaint for failing to state a claim upon which
15 relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and § 1915A(b)(1), and
16 **GRANTS** him forty-five (45) days leave from the date of this Order in which to file an
17 Amended Complaint which cures all the deficiencies of pleading noted. Plaintiff's
18 Amended Complaint must be complete by itself without reference to his original
19 pleading. Defendants not named and any claim not re-alleged in his Amended Complaint
20 will be considered waived. *See* S.D. CAL. CIVLR 15.1; *Hal Roach Studios, Inc. v. Richard*
21 *Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) ("[A]n amended pleading
22 supersedes the original."); *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012)
23 (noting that claims dismissed with leave to amend which are not re-alleged in an
24 amended pleading may be "considered waived if not repled.").

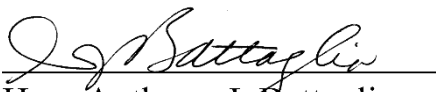
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28 1105 n.2 (9th Cir. 1995) (noting that a prisoner's complaint is considered frivolous under
28 U.S.C. § 1915 if it "merely repeats pending or previously litigated claims.").

1 If Plaintiff fails to file an Amended Complaint within the time provided, the Court
2 will enter a final Order dismissing this civil action based both on Plaintiff's failure to
3 state a claim upon which relief can be granted pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii)
4 and 1915A(b)(1), and his failure to prosecute in compliance with a court order requiring
5 amendment. *See Lira v. Herrera*, 427 F.3d 1164, 1169 (9th Cir. 2005) ("If a plaintiff does
6 not take advantage of the opportunity to fix his complaint, a district court may convert the
7 dismissal of the complaint into dismissal of the entire action.").

8 **IT IS SO ORDERED.**

9 Dated: October 25, 2016

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11 Hon. Anthony J. Battaglia
12 United States District Judge
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